

Tax Type: Motor Fuel Use Tax
Issue: Failure To Have Motor Fuel Use Tax Decal/Permit

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	Docket No. 02-ST-0000
v.)	Acct # 00-00000
)	NTL # 00-00000000
JOHN DOE/)	
ABC & SON, INC.)	
Taxpayer)	

Appearances: Matthew Crain, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois.

The Department of Revenue (“Department”) issued a Notice of Tax Liability ("NTL") to John Doe/ABC & Son, Inc. for motor fuel use tax. John Doe is an employee of ABC & Son, Inc. (“taxpayer”). The NTL alleges that the taxpayer was operating a commercial motor vehicle in Illinois without a valid motor fuel use tax license. The taxpayer timely protested the NTL. The parties have filed a stipulation of facts and requested that this matter be decided based on their written submissions. Joe Blow, who is the president of ABC & Son, Inc., filed the documents on behalf of the taxpayer. After reviewing the documentation presented, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The taxpayer filed a form MFUT-12, Application for Motor Fuel Use Tax IFTA License and Decals, with the Department. The form was dated July 7, 2001 and postmarked July 12, 2001. (Stip. #3)
2. The taxpayer's check for the fees associated with the form MFUT-12 was dated July 7, 2001 and cancelled on July 20, 2001. The IFTA decal was issued to the taxpayer on July 24, 2001. (Stip. #4)
3. On July 11, 2001, the taxpayer's employee was issued a citation for failing to display a valid IFTA decal and for failing to keep a copy of a valid IFTA registration in his commercial motor vehicle. (Stip. #5; Joint Ex. #1, p. 10)
4. On October 5, 2001, the Department issued an NTL to the taxpayer for motor fuel use tax showing a penalty due of \$1000 for failure to have a valid license while operating the vehicle on July 11, 2001. (Joint Ex. #1, p. 12).

CONCLUSIONS OF LAW:

The NTL issued by the Department alleges that the taxpayer was found operating a commercial motor vehicle in Illinois without a valid motor fuel use tax license pursuant to section 13a.4 of the Motor Fuel Tax Act (Act) (35 ILCS 505/1 *et seq.*), which provides in part as follows:

"Except as provided in Section 13a.5 of this Act, no motor carrier shall operate in Illinois without first securing a motor fuel use tax license and decals from the Department or a motor fuel use tax license and decals issued under the International Fuel Tax Agreement by any member jurisdiction." (35 ILCS 505/13a.4).

Section 13a.5 provides an exception for motor carriers holding a single trip permit. (35 ILCS 505/13a.5). A "motor carrier" is defined as any person who operates a commercial motor vehicle in Illinois. (35 ILCS 505/1.17). Section 13a.4 of the Act also provides that the motor

fuel use tax license shall be carried in the cab of each vehicle. (35 ILCS 505/13a.4; see also 625 ILCS 5/11-1419.03)). Section 13a.6 of the Act states that if a commercial motor vehicle is found operating in Illinois without registering and securing a valid motor fuel use tax license, then the person required to obtain a license or permit under Section 13a.4 or 13a.5 of the Act must pay a minimum of \$1,000 as a penalty. (35 ILCS 505/13a.6(b)).

Section 21 of the Act incorporates by reference section 5 of the Retailers' Occupation Tax Act (35 ILCS 120/1 *et seq.*), which provides that the Department's determination of the amount of tax owed is *prima facie* correct and *prima facie* evidence of the correctness of the amount of tax due. 35 ILCS 505/21; 120/5. Once the Department has established its *prima facie* case, the burden shifts to the taxpayer to prove by sufficient documentary evidence that the assessment is incorrect. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill.App.3d 203, 217 (1st Dist. 1991); Lakeland Construction Co., Inc. v. Department of Revenue, 62 Ill.App.3d 1036, 1039 (2nd Dist. 1978).

The taxpayer contends that it attempted to comply with the Motor Fuel Tax Act prior to the issuance of the citation. On June 27, 2001, the taxpayer's representative went to the Secretary of State's office and received information concerning the need to apply for a motor fuel use tax license. He called the Department for an application and was assured that an application form would be sent to him. He has never received an application form from the Department. Another truck owner told him that he could get a copy of the application on the internet. On July 7, 2001, the taxpayer printed out the application, completed it, and mailed it to the Department. The taxpayer contends that the Department probably received the application on July 9, 2001. After the taxpayer's employee received the citation, the taxpayer called the Department, and its application was processed. The taxpayer received the license on July 24, 2001.

Although the taxpayer contends that the Department received the application on July 9, 2001, the parties agreed through stipulations that the form was postmarked July 12, 2001, and therefore could not have been received prior to that date. Nevertheless, the Motor Fuel Tax Act does not contain a provision that allows the penalty to be abated based on the taxpayer's reasonable attempts to comply with the law. The Act simply requires the taxpayer to obtain the license prior to operating the commercial motor vehicle in Illinois, and the failure to do so requires imposition of the penalty. Because the taxpayer did not have a motor fuel use tax license on the day that its employee was operating the truck, the penalty must be upheld.

Linda Olivero
Administrative Law Judge

Enter: May 15, 2002